

THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

ZUNUM AERO, INC.,

Plaintiff,

v.

THE BOEING COMPANY; BOEING
HORIZONX VENTURES, LLC;
SAFRAN, S.A.; SAFRAN CORPORATE
VENTURES, S.A.S.; SAFRAN
ELECTRICAL & POWER, S.A.S.;
SAFRAN HELICOPTER ENGINES,
SASU,

Defendants.

Case No. C21-0896JLR

STIPULATED PROTECTIVE ORDER

The Court finds that this action may involve trade secrets and other valuable research, development, commercial, financial, export-controlled, or technical proprietary information that is regarded by the parties as confidential. To expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately

1 protect information the parties (or any nonparties) are entitled to keep confidential, to ensure
 2 that only materials the parties (or nonparties) are entitled to keep confidential are subject to
 3 such treatment, and to ensure that the parties are permitted reasonably necessary uses of such
 4 materials in preparation for and in the conduct of trial, pursuant to Fed. R. Civ. P. 26(c), and
 5 for good cause shown, it is hereby
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10 ORDERED that the following agreed terms shall govern the production of documents
 11 and other material in this action:
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15 **1. Definitions**

- 16 a. "Party" means any party to this action, including all of its officers, directors,
 17 employees, consultants, retained experts, and outside counsel (and their
 18 support staff).
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 20 b. "Material" means all information, documents and things produced, served or
 21 otherwise provided in this action by the Parties or by non-parties.
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 23 c. "CONFIDENTIAL Material" means information, documents, or things the
 24 Designating Party believes in good faith is not generally known to others, and
 25 which the Designating Party (i) would not normally reveal to third parties
 26 except in confidence or has undertaken with others to maintain in confidence,
 27 or (ii) believes in good faith is protected by a right to privacy under federal or
 28 state law or any other applicable privilege or right related to confidentiality or
 29 privacy. Information and other Material may be designated as
 30 CONFIDENTIAL for purposes of this Protective Order if the Designating
 31 Party in good faith considers it to constitute or to contain trade secrets or other
 32 confidential research, development, or commercial information.
 33 CONFIDENTIAL Material shall include all information, documents,
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1 testimony, and things referring or relating to the foregoing, including but not
2 limited to copies, summaries, and abstracts of the foregoing, and shall be
3 designated as such in the manner described in Section 2.
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7 d. "ATTORNEYS' EYES ONLY Material" means information, documents, and
8 things the Designating Party believes in good faith is not generally known to
9 others and has significant competitive value such that unrestricted disclosure
10 to others would create a substantial risk of serious injury, and which the
11 Designating Party (i) would not normally reveal to third parties except in
12 confidence or has undertaken with others to maintain in confidence, or (ii)
13 believes in good faith is significantly sensitive and protected by a right to
14 privacy under federal or state law or any other applicable privilege or right
15 related to confidentiality or privacy. The designation is reserved for
16 information that constitutes financial, technical or commercially sensitive
17 competitive or proprietary information that the Designating Party maintains as
18 highly confidential in its business, including information obtained from a
19 nonparty pursuant to a current Nondisclosure Agreement ("NDA"),
20 information relating to future products, strategic plans, non-public financial
21 data, documents that would reveal trade secrets, licensing documents and
22 licensing communications, and settlement agreements or settlement
23 communications, the disclosure of which is likely to cause harm to the
24 competitive position of the Designating Party. ATTORNEYS' EYES ONLY
25 Material shall include all information, documents, testimony, and things
26 referring or relating to the foregoing, including but not limited to copies,
27 summaries, and abstracts of the foregoing, and shall be designated as such in
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1 the manner described in Section 2. Any attorney representing a Party, whether
2 in-house or outside counsel, and any person associated with a Party and
3 permitted to receive the other Party's ATTORNEYS' EYES ONLY Material,
4 who obtains, receives, has access to, or otherwise learns, in whole or in part,
5 the other Party's ATTORNEYS' EYES ONLY Material under this Order, shall
6 not prepare, prosecute, or assist in the development of the technical substance
7 of any patent application pertaining to propulsion, powertrain, ducted
8 propulsors, batteries and battery packs (including supporting swap or recharge
9 systems), electromechanical flight control systems, flight control algorithms
10 with a V-tail, primary or secondary electricals, electronics, electric machines,
11 turbogenerators, controls, or thermal management systems (including any
12 related systems or sub-systems of the foregoing) for hybrid-electric or electric-
13 only aircraft; systems or methods for integrating hybrid-electric or electric-
14 only aircraft into passenger, cargo, or military transit networks; or the design,
15 operation, performance, production, or commercialization of hybrid-electric or
16 electric-only aircraft (the "Field of Invention") during the pendency of this
17 Action and for one year after its conclusion, including any appeals. If, during
18 the course of this Action, the parties determine that discovery of additional
19 highly confidential or trade secret information on topics not included within
20 the Field of Invention will be necessary, the parties agree to meet-and-confer
21 to determine if this Order should be amended. Zunum expressly reserves the
22 right to seek further protection regarding who may have access to certain
23 ATTORNEYS' EYES ONLY Material and does not, by agreeing to this
24 definition or this Order, waive any argument that the Field of Invention or

1 identification of who may access ATTORNEYS' EYES ONLY Material
2 pursuant to Paragraph 8(b) below is sufficient. For purposes of this paragraph,
3 "prosecution" includes drafting, amending, or advising on the technical
4 substance of patent applications, including the scope of any patent claims.
5 Prosecution includes, for example, original prosecution and reissue. To avoid
6 any doubt, "prosecution" as used in this paragraph does not include
7 representing a party challenging a patent or patent application before a
8 domestic or foreign agency (including, but not limited to, a reissue protest, ex
9 parte reexamination, inter partes reexamination, post grant review, covered
10 business method patent review, or inter partes review), or representing a party
11 defending against such a challenge, provided that the party defending does not
12 move to amend applications and/or applications are not amended in the course
13 of that defense.
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- 26 e. "EXPORT-CONTROLLED Material" shall include information that is subject
27 to the requirements of the Export Administration Regulations ("EAR"), 15
28 C.F.R. §§ 730.1 *et seq.*, and/or the International Traffic in Arms Regulations
29 ("ITAR"), 22 C.F.R. §§ 120.0 *et seq.* Such material may be contained in
30 documents that a party furnishes in this case related to dual use commodities,
31 technology, software, or defense articles, and shall include all information,
32 documents, testimony, and things referring or relating to the foregoing,
33 including but not limited to copies, summaries, and abstracts of the foregoing,
34 which shall be designated as such in the manner described in Section 2.
35 Although the parties shall use their best efforts to designate such information
36 as EXPORT-CONTROLLED Material in accordance with this Order,
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1 information subject to EAR and ITAR shall at all times remain EXPORT-
2 CONTROLLED Material regardless of whether such designation is made, in
3 accordance with federal law. To the extent that any Party seeks to use
4 EXPORT-CONTROLLED Material in any deposition or filing in this Action,
5 the parties agree to use reasonable efforts to cooperate to facilitate such use to
6 the extent consistent with all applicable laws and regulations. Such reasonable
7 efforts shall not obligate any Party to violate any export control laws or
8 regulations or otherwise subject itself to penalty for any such violation.
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11 f. "Producing Party" means a Party or nonparty that produces Material in this
12 action.
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14 g. "Receiving Party" means a Party that receives Material from a Producing Party.
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16 h. "Designated Material" means Material that is designated "CONFIDENTIAL"
17 or "ATTORNEYS' EYES ONLY" under this Order.
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19 i. "Designating Party" means a Party or nonparty that designates information,
20 documents or things as "CONFIDENTIAL" or "ATTORNEYS' EYES
21 ONLY."
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23 j. "Outside Counsel" means counsel who appears on the pleadings as counsel for
24 a Party, employees of such counsel to whom it is reasonably necessary to
25 disclose the information for this litigation, including support staff employed by
26 the attorneys, such as paralegals, legal translators, legal secretaries, legal clerks
27 and shorthand reporters, or an independent legal translators retained to
28 translate in connection with this action, or independent shorthand reporters
29 retained to record and transcribe testimony in connection with this action.
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1 k. "In-House Litigation Counsel" means any attorney employed by a Party in the
 2 capacity of a litigation attorney whose primary responsibility is to manage,
 3 supervise or oversee litigation as part of his or her responsibilities for the Party
 4 and who does not engage in competitive decision-making (and their support
 5 staff such as paralegals, administrative assistants and secretaries).

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 11 l. "Outside Consultant" means a person with specialized knowledge or
 12 experience in a matter pertinent to the litigation who has been retained by a
 13 Party or Outside Counsel to serve as an expert witness or as a consultant in this
 14 action and who is not a current or anticipated employee of a Party, or of a
 15 competitor of the Producing Party, or a consultant involved in product or
 16 process development for a competitor of the Producing Party.

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 22 m. "Professional Vendors" means persons or entities that provide litigation
 23 support services (e.g., photocopying; videotaping; court reporting; translating;
 24 designing and preparing exhibits or demonstrations; organizing, storing, or
 25 retrieving data in any form or medium; etc.) and their employees and
 26 subcontractors. This definition includes a professional jury or trial consultant
 27 retained in connection with this litigation and mock jurors retained by such a
 28 consultant to assist in that consultant's work. Professional vendors do not
 29 include consultants who fall within the definition of Outside Consultant.

30 31 32 33 34 35 36 37 38 39 **2. Procedure for Designating Materials**

40 41 a. Documents and Other Tangible Materials

42 The designation of Material in the form of documents, discovery responses, or other
 43 tangible materials other than depositions or other pre-trial testimony shall be made by the
 44 Designating Party by conspicuously affixing the legend "CONFIDENTIAL" or
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1 “ATTORNEYS’ EYES ONLY” or “EXPORT-CONTROLLED” on each page containing
2 information to which the designation applies (or in the case of computer medium on the
3 medium and its label and/or cover). To the extent practical, the legend shall be placed near
4 the Bates number identifying the Material. If a document has more than one designation, the
5 more restrictive or higher confidential designation applies.
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11 b. Nontangible Materials
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13 All Material designated CONFIDENTIAL or ATTORNEYS’ EYES ONLY, or
14 EXPORT-CONTROLLED that is not reduced to documentary, tangible, or physical form or
15 that cannot be conveniently designated in the manner set forth above shall be designated by
16 the Designating Party by informing the Receiving Party of the designation in writing.
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21 c. Deposition Testimony and Transcripts
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23 Any Party may designate as CONFIDENTIAL or ATTORNEYS’ EYES ONLY, or
24 EXPORT-CONTROLLED information that is disclosed at a deposition in this action by
25 indicating on the record at the deposition that the testimony is CONFIDENTIAL or
26 ATTORNEYS’ EYES ONLY or EXPORT-CONTROLLED and is subject to the provisions
27 of this Protective Order. Any Party may also designate information as CONFIDENTIAL or
28 ATTORNEYS’ EYES ONLY, or EXPORT-CONTROLLED by notifying the court reporter
29 and all of the parties, in writing and within 30 days after receipt of the deposition transcript,
30 of the specific pages and lines of the transcript that should be treated thereafter as
31 CONFIDENTIAL or ATTORNEYS’ EYES ONLY or EXPORT-CONTROLLED. Each
32 Party shall attach a copy of such written notice or notices to the face of the transcript and each
33 copy thereof in his/her possession, custody, or control. All deposition transcripts shall be
34 treated as CONFIDENTIAL for at least a period of 30 days after receipt of the transcript,
35 except that such temporary designation shall not preclude the witness from reviewing the
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1 transcript for purposes of making corrections thereto, and any portion of the transcript
2 designated on the record as ATTORNEYS' EYES ONLY or EXPORT-CONTROLLED, shall
3 maintain that designation subject to the provisions of paragraph 6, below.
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7 **3. Inadvertent Production**

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9 a. Nondesignated Material

10 If a Party or nonparty through inadvertence produces any CONFIDENTIAL or
11 ATTORNEYS' EYES ONLY, or EXPORT-CONTROLLED Material without labeling,
12 marking, or otherwise designating it as such in accordance with the provisions of this
13 Protective Order, the Designating Party or nonparty may give written notice to the Receiving
14 Party that the information, document, or thing produced is designated CONFIDENTIAL,
15 ATTORNEYS' EYES ONLY, or EXPORT-CONTROLLED and should be treated as such in
16 accordance with the provisions of this Protective Order. The Designating Party must provide
17 the Receiving Party with a replacement copy of the document or information bearing the
18 designation of CONFIDENTIAL, ATTORNEYS' EYES ONLY, or EXPORT-
19 CONTROLLED within 5 business days of such written notice; the Receiving Party shall
20 promptly destroy or return the undesignated document or information and any copies thereof
21 after receiving the appropriately designated document or information. The Receiving Party
22 must treat such documents according to their most recent designation of CONFIDENTIAL,
23 ATTORNEYS' EYES ONLY, or EXPORT-CONTROLLED from the date such notice is
24 received. If, before receiving such notice, the Receiving Party disclosed such nondesignated
25 information to persons who would not have been entitled to receive it under this Protective
26 Order, the Receiving Party must immediately inform the Designating Party of all pertinent
27 facts relating to such disclosure and shall make reasonable efforts to retrieve such information
28 and to prevent further disclosure.
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1 b. No Waiver of Privilege

2 Inspection or production of documents (including physical objects) shall not constitute
 3 a waiver of the attorney-client privilege or work product immunity or any other applicable
 4 privilege or immunity from discovery if, as soon as reasonably possible after the Producing
 5 Party becomes aware of any inadvertent or unintentional disclosure, the Producing Party
 6 designates any such documents as within the attorney-client privilege or work product
 7 immunity or any other applicable privilege or immunity and requests the destruction of such
 8 inadvertently produced documents to the Producing Party. Upon such a request, the Receiving
 9 Party shall immediately take steps to ensure that such inadvertently produced documents are
 10 treated as privileged or immune from discovery unless and until the Court rules otherwise and
 11 that they are sequestered from further copying, distribution, and/or review by the Receiving
 12 Party and its Outside Counsel, except to the limited extent necessary to establish whether the
 13 claim of privilege or work product immunity is valid. In addition, within seven (7) days of
 14 the Producing Party's request, the Receiving Party must destroy all copies of such
 15 inadvertently produced document(s) (and any other documents or things to the extent they
 16 incorporate such privileged or immunized material), unless it first informs the Producing Party
 17 of its intent to challenge the propriety of the attorney-client privilege or work product
 18 immunity or other applicable privilege or immunity designation before the Court. Pursuant
 19 to Fed. R. Evid. 502(e), once this Order is entered by the Court, this agreement shall be
 20 binding on third parties.

21 **4. Material Not Covered By This Order**

22 No Material shall be deemed CONFIDENTIAL or ATTORNEYS' EYES ONLY if it
 23 is Material that:

- 24 a. is in the public domain at the time of disclosure; or

- b. becomes part of the public domain as a result of publication not involving a violation of this Protective Order; or
- c. the Receiving Party lawfully received from a nonparty without restriction as to disclosure, provided such nonparty has the right to make the disclosure to the Receiving Party; or
- d. the Receiving Party can show was independently developed by it after the time of disclosure by personnel who did not have access to the Producing Party's CONFIDENTIAL or ATTORNEYS' EYES ONLY Material.

5. Nonparty Designations

Nonparties who produce Material in this action may avail themselves of the provisions of this Protective Order, and Material produced by nonparties shall be treated by the parties in conformance with this Protective Order. A nonparty's use of this Protective Order for its CONFIDENTIAL, ATTORNEYS' EYES ONLY, or EXPORT-CONTROLLED Material does not entitle that nonparty to have access to CONFIDENTIAL, ATTORNEYS' EYES ONLY, or EXPORT-CONTROLLED Material produced by any Party in this case.

6. Challenges to Designations

The Parties and any nonparty that produce Material pursuant to this Protective Order shall use reasonable care when designating Material as CONFIDENTIAL, ATTORNEYS' EYES ONLY, or EXPORT-CONTROLLED Material. Nothing in this Protective Order shall prevent a Receiving Party from contending that any Material has been improperly designated hereunder. If any Party disagrees with the Designating Party's designation of any Material, then they initially shall make every attempt to resolve the dispute without court involvement. If they are unable to resolve such a dispute informally, the Party disagreeing with the designation may apply to the Court for relief. The Designating Party asserting confidentiality

1 will bear the burden of proving confidentiality upon any such application. Any motion
2 regarding disputed Material or for a protective order must include a certification, in the motion
3 or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
4 conference with other affected parties in an effort to resolve the dispute without court action.
5 The certification must list the date, manner, and participants to the conference. A good faith
6 effort to confer requires a face-to-face meeting or a telephone conference.
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12 Any disputed Material shall be treated in the manner designated by the Designating
13 Party and subject to the protection of this Protective Order unless and until the Court
14 determines otherwise. No Party shall be obligated to challenge the propriety of a designation,
15 and a failure to do so shall not constitute an admission that any Material is appropriately
16 designated, nor preclude a later challenge to the propriety of such designation.
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23 **7. General Limitations on Disclosure and Use of Designated Material**

24 CONFIDENTIAL or ATTORNEYS' EYES ONLY Material and the substance and
25 content thereof, including any notes, memoranda, or other similar documents relating thereto,
26 shall be used by a Receiving Party solely for the purpose of this litigation and not for any
27 business purpose. Any person in possession of CONFIDENTIAL or ATTORNEYS' EYES
28 ONLY Material shall exercise reasonably appropriate care with regard to storage, custody, or
29 use of such Material to ensure that the confidential nature of the Material is maintained. If
30 CONFIDENTIAL or ATTORNEYS' EYES ONLY Material is disclosed or comes into the
31 possession of any person other than in a manner authorized by this Protective Order, any Party
32 having knowledge of the disclosure must immediately inform the Designating Party of all
33 pertinent facts relating to such disclosure and shall make reasonable efforts to retrieve such
34 Material and to prevent further disclosure.
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1 In addition, the Parties have a responsibility to ensure that EXPORT-CONTROLLED
2 Material in their possession, custody or control is used in accordance with U.S. law, including
3 EAR, 15 C.F.R. §§ 730.0 *et seq.*, or ITAR, 22 C.F.R. §§ 120.1 *et seq.* To prevent unauthorized
4 use of EXPORT-CONTROLLED Material, the Parties agree to follow the procedure outlined
5 in this Order.
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10 Counsel or another individual authorized to received EXPORT-CONTROLLED
11 Material pursuant to the Protective Order will not disclose, export, or transfer, in any manner,
12 EXPORT-CONTROLLED Material to any foreign person, as defined in 20 C.F.R. § 120.16,
13 except as permitted by U.S. law, and will not transport any such document outside of U.S.
14 territory, without prior written approval of the Bureau of Industry and Security, the United
15 States Department of State, or other appropriate U.S. government department or agency
16 except as permitted by U.S. law. Use or access outside of the U.S. or by Non-U.S. persons
17 within the U.S. may require a license from the U.S. Department of State in accordance with
18 ITAR or from the U.S. Department of Commerce in accordance with the EAR. The Party
19 producing the documents accepts no liability on behalf of the recipient for the procurement of
20 or expense of such license, or in the event the recipient discloses controlled information or
21 violates the EAR or ITAR. Diversion of any technical data subject to the ITAR or EAR to any
22 (i) person, (ii) entity, (iii) country or (iv) any entity located or incorporated in a country, that
23 is on any denied party list or list of sanctioned countries, pursuant to either the EAR, ITAR or
24 any regulations and orders administered by the Treasury Department's Office of Foreign
25 Assets Control Regulations (31 C.F.R. Chapter V) is prohibited.
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1 **8. Access to Designated Material**

2 a. Access to CONFIDENTIAL Material

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4 Unless otherwise ordered by the Court or permitted in writing by the Designating
5 Party, a Receiving Party may disclose information, documents, or things designated as
6 "CONFIDENTIAL" only to the following persons and persons identified in Section 8(g)
7 below regarding use of Designated Material at depositions:
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12 i. The Court and its personnel, including court reporters and the jury.
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14 ii. Mediators, arbitrators, and such of their staff as may be necessary for
15 the conduct of the mediation or arbitration.
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17 iii. Outside Counsel for each Party, as well as paralegals, administrative
18 assistants, secretaries, and other members of the clerical and
19 administrative staff ("Support Staff") who work for such counsel and
20 whose functions require access to Material designated
21 CONFIDENTIAL.
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23 iv. In-House Litigation Counsel for each Party and Support Staff who
24 work for such counsel and whose functions require access to Material
25 designated CONFIDENTIAL.
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27 v. Outside Consultants with whom counsel deem it necessary to consult
28 concerning technical, financial, or other aspects of this case to prepare
29 for trial. HOWEVER, no Material designated as CONFIDENTIAL
30 shall be disclosed by a Receiving Party to an Outside Consultant until
31 the Outside Consultant has signed and returned to the Receiving Party's
32 Outside Counsel the Confidentiality Agreement attached hereto as
33 Exhibit A, declaring that he or she has read and understands this
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1 Protective Order and agrees to be bound by its terms. The Receiving
2 Party's Outside Counsel shall retain the written Confidentiality
3 Agreement for the duration of the litigation.
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7 vi. Employees, officers, and directors of a Receiving Party who are
8 involved in maintaining, defending, or evaluating this litigation (and
9 supporting personnel). HOWEVER, no document designated as
10 CONFIDENTIAL shall be disclosed to an employee, officer, or
11 director of a Receiving Party until such individual has signed and
12 returned to the Receiving Party's Outside Counsel the Confidentiality
13 Agreement attached hereto as Exhibit A, thereby declaring that he or
14 she has read and understands this Protective Order and agrees to be
15 bound by its terms. The Receiving Party's Outside Counsel shall retain
16 such written Confidentiality Agreement for the duration of the
17 litigation.
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29 vii. Professional Vendors with whom counsel deem it necessary to engage
30 in order to obtain copies of Material designated CONFIDENTIAL as
31 reasonably necessary for maintaining, defending, or evaluating this
32 litigation. Before disclosing any protected information to any person
33 or service described in this paragraph, Outside Counsel for the
34 Receiving Party shall first obtain from such person or service a written
35 Confidentiality Agreement, in the form attached hereto as Exhibit A.
36 The Receiving Party's Outside Counsel shall retain such written
37 Confidentiality Agreement for the duration of the litigation.
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47 viii. Any other person as to whom the Designating Party agrees in writing.

b. Access to ATTORNEYS' EYES ONLY Material

Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information, document or things designated as "ATTORNEYS' EYES ONLY" only to the following persons and persons identified in Section 8(g) below regarding use of Designated Material at depositions:

- i. The Court and its personnel, including court reporters and the jury.
- ii. Mediators, arbitrators, and such of their staff as may be necessary for the conduct of the mediation or arbitration.
- iii. Outside Counsel for each Party and Support Staff who work for such counsel and whose functions require access to Material designated ATTORNEYS' EYES ONLY, consistent with the limitations in Paragraph 1(d).
- iv. In-House Counsel for each Party and Support Staff who work for such counsel and whose functions require access to Material designated ATTORNEYS' EYES ONLY, consistent with the limitations in Paragraph 1(d).
- v. Outside Consultants with whom counsel deem it necessary to consult concerning technical, financial, or other aspects of this case to prepare for trial. An Outside Consultant's access to ATTORNEYS' EYES ONLY Material shall be subject to all the terms and limitations provided for in Section 8(a)(v) above.
- vi. Professional Vendors with whom counsel deem it necessary to engage in order to obtain copies of Material designated ATTORNEYS' EYES ONLY as reasonably necessary for maintaining, defending, or

1 evaluating this litigation. Before disclosing any protected information
 2 to any person or service described in this paragraph, Outside Counsel
 3 for the Receiving Party shall first obtain from such person or service a
 4 written Confidentiality Agreement, in the form attached hereto as
 5 Exhibit A. The Receiving Party's Outside Counsel shall retain such
 6 written Confidentiality Agreement for the duration of the litigation.
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 13 vii. Any other person as to whom the Designating Party agrees in writing.

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 15 c. Access to EXPORT-CONTROLLED Material

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 17 The Parties have a responsibility to ensure that access to EXPORT-CONTROLLED
 18 Material in their possession, custody or control is restricted to authorized persons in
 19 accordance with U.S. law, including EAR, 15 C.F.R. §§ 730.0 *et seq.*, and/or ITAR, 22 C.F.R.
 20 §§120.1 *et seq.*, including but not limited to disclosure to outside counsel, experts, consultants,
 21 and any staff supporting the same. To prevent unauthorized access of EXPORT-
 22 CONTROLLED Material, the Parties agree to follow the procedure outlined in this paragraph.
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 26 (i) All physical documents containing EXPORT-CONTROLLED Material
 27 shall be placed in a secure file or room with access limited to those U.S. Persons (as
 28 that term is defined in 22 C.F.R. § 120.15) who are permitted by this Protective Order
 29 to access CONFIDENTIAL Material (or ATTORNEYS' EYES ONLY Material, if
 30 applicable).
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 33 (ii) If documents containing Export-Controlled Material are scanned and stored
 34 in a computer or loaded to a document review platform or software, access to such
 35 electronic files shall be restricted and limited to those U.S. Persons (as that term is
 36 defined in 22 C.F.R. § 120.15) who are permitted by this Protective Order to access
 37 CONFIDENTIAL Material (or ATTORNEYS' EYES ONLY Material, if applicable).
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1 d. Exceptions to Limitations on Disclosure

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3 Nothing herein shall prevent disclosure of CONFIDENTIAL or ATTORNEYS' EYES
4 ONLY Material: (a) by the Designating Party to anyone else; (b) by the Receiving Party to
5 an officer or employee of the Designating Party; (c) by a Party to any person, whether or not
6 affiliated with the Designating Party at the time of disclosure, who either authored the
7 CONFIDENTIAL or ATTORNEYS' EYES ONLY Material, in whole or in part, or who has
8 independently received the CONFIDENTIAL or ATTORNEYS' EYES ONLY Material other
9 than through a means constituting a breach of this Protective Order or any other obligation of
10 confidentiality; or (d) to any person who is expressly identified as previously having had
11 access to the CONFIDENTIAL or ATTORNEYS' EYES ONLY Material, which
12 identification is made by the sworn testimony of another or unambiguously appears on the
13 face of a document, and other than through a means constituting breach of this Protective
14 Order or any other obligation of confidentiality.
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17 e. Filing Under Seal of CONFIDENTIAL Material or ATTORNEYS' EYES
18 ONLY Material
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20 Any Party or third-party discovery respondent ("Filing Party") seeking to file with the
21 Court a document that contains CONFIDENTIAL Material or ATTORNEYS' EYES ONLY
22 Material shall, pursuant to the Western District of Washington Civil Rules and Judge Robart's
23 Chambers Procedures, move to obtain the Court's permission to file that document under seal.
24 The Filing Party shall comply with all procedures ordered by the Court with respect to such
25 motions, but under no circumstances shall the Filing Party file the document not under seal
26 prior to the Court's ruling on the motion to seal. If any Filing Party fails to file Designated
27 Material under seal, the Designating Party or any Party claiming confidentiality for the
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1 Designated Material may move the Court to place the filing under seal in accordance with
 2 Western District of Washington Civil Rules and Judge Robart's Chambers Procedures.
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4 The Parties agree to cooperate with respect to any motion seeking leave to seal any
 5 Designated Material, and it shall be the Designating Party's burden to justify the need to seal
 6 the Designated Material. In the event that the Court denies a motion seeking leave to seal any
 7 Designated Material, the Receiving Party shall be free to file the Designated Material without
 8 sealing.
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14 f. Filing Under Seal of EXPORT-CONTROLLED Material
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16 Before filing EXPORT-CONTROLLED Material or discussing or referencing such material
 17 in Court filings, the Filing Party shall confer with the Designating Party to determine whether
 18 the Designating Party will remove the EXPORT-CONTROLLED designation, whether the
 19 document can be redacted, or whether a motion to seal or stipulation and proposed order is
 20 warranted. During the meet and confer process, the Designating Party must identify the basis
 21 for sealing the specific EXPORT-CONTROLLED Material at issue, and the Filing Party shall
 22 include this basis in its motion to seal, along with any objection to sealing the information at
 23 issue.
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32 g. Use at Depositions
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- 34 i. Except as otherwise ordered by the Court, any deposition or trial
 35 witness may be examined and may testify concerning all
 36 CONFIDENTIAL or ATTORNEYS' EYES ONLY Material of which
 37 such person has prior knowledge. Before introducing, referencing, or
 38 discussing any EXPORT-CONTROLLED Material during a
 39 deposition, the Party taking the deposition shall confer with the
 40 Designating Party and shall not proceed to use such EXPORT-
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1 CONTROLLED Material during the deposition without first obtaining
2 the Designating Party's consent in writing or on the record at the
3 deposition. Without in any way limiting the generality of the
4 foregoing:
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- 8 1. A present director, officer, and/or employee of a Producing
9 Party may be examined and may testify concerning all
10 CONFIDENTIAL or ATTORNEYS' EYES ONLY Material
11 that has been produced by that Party.
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17 2. A former director, officer, and/or employee of a Producing
18 Party may be interviewed, examined, and may testify
19 concerning all CONFIDENTIAL or ATTORNEYS' EYES
20 ONLY Material of which such person has prior knowledge,
21 including any Designated Material that refers to matters of
22 which the witness has personal knowledge, which has been
23 produced by that Party, and which pertains to the time period or
24 periods of such witness's employment or service.
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32 3. Nonparties may be examined or testify concerning any
33 document containing CONFIDENTIAL or ATTORNEYS'
34 EYES ONLY Material of a Producing Party that appears on its
35 face or from other documents or testimony to have been
36 received from, or communicated to, the nonparty as a result of
37 any contact or relationship with the Producing Party or a
38 representative of such Producing Party. Any person other than
39 the witness, his or her counsel, and any person qualified to
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1 receive CONFIDENTIAL or ATTORNEYS' EYES ONLY
2 Material under this Protective Order shall be excluded from the
3 portion of the examination concerning such Material, absent the
4 consent of the Designating Party. If the witness is represented
5 by an attorney who is not qualified under this Protective Order
6 to receive CONFIDENTIAL or ATTORNEYS' EYES ONLY
7 Material, then prior to the examination, the attorney shall
8 provide a signed Confidentiality Agreement, in the form
9 attached hereto as Exhibit A, declaring that he or she will
10 comply with the terms of this Protective Order and maintain the
11 confidentiality of all CONFIDENTIAL or ATTORNEYS'
12 EYES ONLY Material disclosed during the course of the
13 examination. If such attorney declines to sign a Confidentiality
14 Agreement before the examination, the Parties, by their
15 attorneys, shall jointly seek a protective order from the Court
16 prohibiting that attorney from disclosing CONFIDENTIAL or
17 ATTORNEYS' EYES ONLY Material disclosed during the
18 deposition.
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37 ii. In addition to the restrictions on the uses of all types of
38 CONFIDENTIAL or ATTORNEYS' EYES ONLY Material set forth
39 in this Protective Order, the following shall apply to CONFIDENTIAL
40 or ATTORNEYS' EYES ONLY Material used at a deposition:
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- 45 1. A witness who previously had access to a document designated
46 CONFIDENTIAL or ATTORNEYS' EYES ONLY, but who is
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not under a present nondisclosure agreement with the Producing Party that applies to the Designated Material, may be shown the document at a deposition if (1) a copy of this Protective Order is attached to any subpoena, notice, or request served on the witness for the deposition, and (2) the witness is advised on the deposition record of the existence of the Protective Order and its requirement that the Parties keep confidential any questions, testimony, or documents that are designated CONFIDENTIAL or ATTORNEYS' EYES ONLY, and the witness agrees to the same by executing Exhibit A.

2. Witnesses, other than an employee or agent of a Party authorized to receive the Designated Material pursuant to this Protective Order, may not copy, take notes on, or retain copies of any CONFIDENTIAL or ATTORNEYS' EYES ONLY Material used or reviewed at a deposition. A witness may not take out of the deposition room any exhibit that is marked CONFIDENTIAL or ATTORNEYS' EYES ONLY. .

9. Stipulations or Additional Relief from the Court; Rights Reserved

The Parties may, by stipulation or other agreement on the record or in writing, provide for exceptions to this Protective Order. Nothing in this Protective Order shall be deemed to preclude any Party from seeking and obtaining, on an appropriate showing, additional protection with respect to the confidentiality of Material or relief from this Protective Order with respect to particular Material designated as CONFIDENTIAL, ATTORNEYS' EYES ONLY, or EXPORT-CONTROLLED. Nothing in this Protective Order shall be deemed to

1 prejudice the rights of the Parties to object to the production of documents they consider not
 2 subject to discovery except where such objection is based solely on the confidentiality of such
 3 documents. Nothing in this Protective Order shall operate as an admission by the Receiving
 4 Party that any particular CONFIDENTIAL, ATTORNEYS' EYES ONLY, or EXPORT-
 5 CONTROLLED document or information contains or reflects trade secrets, proprietary, or
 6 any other type of confidential matter. This Protective Order shall not supersede, waive,
 7 amend, modify, or render null any prior confidentiality or nondisclosure agreement or
 8 obligation entered into by the Parties.
 9

10. **Destruction or Return of Documents at the End of Litigation**

11. a. General Obligation to Destroy CONFIDENTIAL, ATTORNEYS' EYES ONLY, and EXPORT-CONTROLLED Material at the End of Litigation

12 Within sixty days after entry of a final, nonappealable judgment or order, expiration
 13 of the deadline for any party to appeal an appealable judgment or order, or the complete
 14 settlement of all claims asserted against all Parties in this action, each Party shall: (i) destroy
 15 all Material received from the Producing Party that is designated CONFIDENTIAL
 16 ATTORNEYS' EYES ONLY, or EXPORT-CONTROLLED unless the Producing Party
 17 requested that certain Material be returned rather than destroyed; and (ii) destroy in whatever
 18 form stored or reproduced, all other physical objects and documents (including but not limited
 19 to correspondence, memoranda, notes, and other work product materials) that contain or refer
 20 to CONFIDENTIAL, ATTORNEYS' EYES ONLY, or EXPORT-CONTROLLED Material;
 21 provided, however, that Outside Counsel shall be entitled to maintain for its files copies of all
 22 attorney work product and pleadings, motions, and trial briefs (including all supporting and
 23 opposing papers and exhibits thereto), written discovery requests and responses (and exhibits
 24 thereto), deposition transcripts (and exhibits thereto), trial transcripts, and exhibits offered or
 25

1 introduced into evidence at trial. Each Party will provide reasonable confirmation and
 2 assurance of their compliance with this paragraph upon request.
 3

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 5 b. Obligation to Retrieve CONFIDENTIAL, ATTORNEYS' EYES ONLY, or
 6 EXPORT-CONTROLLED Material Disclosed to Others
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8 Each Party's obligation to return or destroy CONFIDENTIAL ATTORNEYS' EYES
 9 ONLY, or EXPORT-CONTROLLED Material received from another Party extends to any
 10 CONFIDENTIAL, ATTORNEYS' EYES ONLY, or EXPORT-CONTROLLED Material the
 11 Receiving Party disclosed to others pursuant to this Protective Order. Within sixty days after
 12 entry of a final, nonappealable judgment or order, expiration of the deadline for any party to
 13 appeal an appealable judgment or order, or the complete settlement of all claims asserted
 14 against all Parties in this action, each Receiving Party shall inform any Producing Party in
 15 writing of: (i) any CONFIDENTIAL, ATTORNEYS' EYES ONLY, or EXPORT-
 16 CONTROLLED Material (and any documentary materials containing information derived
 17 from CONFIDENTIAL, ATTORNEYS' EYES ONLY, or EXPORT-CONTROLLED
 18 Material) that, to the Party's knowledge, has not been returned and/or destroyed in the manner
 19 required by this Protective Order; and (ii) the identity of any person who has failed to return
 20 or destroy such CONFIDENTIAL, ATTORNEYS' EYES ONLY, or EXPORT-
 21 CONTROLLED Material or derivative material.
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 36 **11. Survival of Order and Retention of Jurisdiction**
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38 The terms of this Protective Order shall survive the final termination of this action to
 39 the extent that any CONFIDENTIAL, ATTORNEYS' EYES ONLY, or EXPORT-
 40 CONTROLLED Material is not or does not become known to the public. This Court shall
 41 retain jurisdiction over this action for the purpose of enforcing this Protective Order. The
 42 Parties agree that any order of dismissal of the Action as to any or all Parties shall include
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1 specific provision that the Court retains jurisdiction to enforce the terms of this Protective
2 Order following dismissal. Each Party hereby consents to the personal jurisdiction of the
3 Court for that purpose.
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7 **12. Treatment Prior to Entry of Order**

8 Each Party agrees to be bound by the terms of this Protective Order as of the date it
9 executes the Order below, even if prior to entry of the Order by the Court.
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13 **13. Protected Material Subpoenaed or Ordered Produced in Other Litigation**

14 If a Receiving Party is served with a subpoena or a court order that would compel
15 disclosure of any information, documents or things designated in this action as
16 “CONFIDENTIAL,” “ATTORNEYS’ EYES ONLY,” or “EXPORT-CONTROLLED,” then
17 the Receiving Party must promptly—and in no event more than ten (10) calendar days after
18 Receiving the subpoena or order—notify the Designating Party. Such notification must
19 include a copy of the subpoena or order. The Receiving Party also must immediately inform
20 in writing the person who caused the subpoena or order to issue that some or all the material
21 covered by the subpoena or order is the subject of this Protective Order. In addition, the
22 Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the person
23 in the other action that caused the subpoena or order to issue. The purpose of imposing these
24 duties is to alert the interested persons to the existence of this Protective Order and to afford
25 the Designating Party in this case an opportunity to try to protect its confidentiality interests
26 in the court from which the subpoena or order issued. The Designating Party shall bear the
27 burdens and the expenses of seeking protection in that court of its CONFIDENTIAL,
28 ATTORNEYS’ EYES ONLY, or EXPORT-CONTROLLED Material. Nothing in these
29 provisions should be construed as authorizing or encouraging a Receiving Party in this action
30 to disobey a lawful directive from another court.
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3 **SO ORDERED** this 13th day of December, 2021.
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12 James L. Robart
13 United States District Judge
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STIPULATED AND AGREED TO:

s/ Susan Foster

Susan Foster, WSBA #18030

s/ David Perez

David Perez, WSBA #43959

s/ Ian Rogers

Ian Rogers, WSBA #46584

PERKINS COIE LLP

1201 Third Avenue, Suite 4900

Seattle, WA 98101-3099

Tel: (206) 359-8000

Fax: (206) 359-9000

Email: sfoster@perkinscoie.com

dperez@perkinscoie.com

irogers@perkinscoie.com

Matthew A. Kairis (TX Bar #24117376)

JONES DAY

(admitted *pro hac vice*)

2727 North Harwood Street, Suite 500

Dallas, TX 75201

Tel: (214) 220-3939

Email: makairis@jonesday.com

Aaron M. Healey (NY Bar #4690400)

JONES DAY

(admitted *pro hac vice*)

250 Vesey Street

New York, NY 10281

Tel: (212) 326-3939

Email: ahealey@jonesday.com

s/ Eliot M. Harris

Eliot M. Harris, WSBA #36590

WILLIAMS, KASTNER & GIBBS PLLC

601 Union Street, Suite 4100

Seattle, WA 98101-2380

Tel: (206) 628-6600

Fax: (206) 628-6611

Email: eharris@williamskastner.com

Colin R. Hagan, MA BBO #684798

(admitted *pro hac vice*)

David J. Shlansky, MA BBO #565321

(admitted *pro hac vice*)

SHLANSKY LAW GROUP, LLP

1 Winnisimmet Street

Chelsea, MA 02150

Tel: (617) 492-7200

Email: colin.hagan@slglawfirm.com

david.shlansky@slglawfirm.com

Attorneys for Plaintiff

Zunum Aero, Inc.

1 Dustin M. Koenig (OH Bar #0092426)
2 **JONES DAY**
3 (admitted *pro hac vice*)
4 325 John H. McConnell Boulevard, Suite 600
5 Columbus, OH 43215
6 Tel: (614) 469.3939
7 Email: dkoenig@jonesday.com
8

9
10 *Attorneys for Defendants*
11 *The Boeing Company and*
12 *Boeing HorizonX Ventures, LLC*
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EXHIBIT A

THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

ZUNUM AERO, INC.,

Plaintiff,

v.

THE BOEING COMPANY; BOEING
HORIZONX VENTURES, LLC;
SAFRAN, S.A.; SAFRAN CORPORATE
VENTURES, S.A.S.; SAFRAN
ELECTRICAL & POWER, S.A.S.;
SAFRAN HELICOPTER ENGINES,
SASU,

Defendants.

Case No. C21-0896JLR

ACKNOWLEDGMENT AND
AGREEMENT TO BE BOUND BY
PROTECTIVE ORDER

I, _____, state that:

1. My address is _____.
2. My present employer is _____.
3. My present occupation or job description is _____.

1 4. I have received a copy of the Stipulated Protective Order entered in this case
2
3 on _____, 20__, and declare under penalty of perjury that I have carefully read
4
5 and understand its contents and confidentiality requirements. I will not divulge any
6
7 information or other Materials designated as "CONFIDENTIAL" or "ATTORNEYS' EYES
8
9 ONLY" to any persons other than those specifically authorized by said Order to receive such
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11 Materials.

12 5. I consent to be subject to the jurisdiction and authority of this Court in the
13
14 event of any violation of this agreement or any dispute related to this agreement, including
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16 any proceedings relating to contempt of Court.
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18 DATED this ____ day of _____, 20__.

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26 *[Typed Name]*
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